

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

L'ORÉAL USA, INC.,
Petitioner,

v.

LIQWD, INC.,
Patent Owner.

Case PGR2018-00025
Patent 9,668,954 B2

Before TONI R. SCHEINER, CHRISTOPHER M. KAISER, and
TIMOTHY G. MAJORS, *Administrative Patent Judges*.

MAJORS, *Administrative Patent Judge*.

ORDER

Granting-In-Part Motion to Seal
35 U.S.C. § 326; 37 C.F.R. §§ 42.14

Conduct of the Proceeding
37 C.F.R. § 42.5

In the July 30, 2019 Final Written Decision (Paper 78), the Board ordered the parties to, within ten days, file a redacted version of the decision along with a joint motion to seal. Paper 78, 105–106. At the same time, the Board also instructed the parties to file within ten days a motion to seal relating to Papers 61, 67, 73, and 74, which papers were filed and marked as including Highly Confidential-Protective Order Material but without an accompanying motion to seal. *Id.* at 103.

The parties, after being granted several requested extensions of time, filed a Joint Motion to Seal Portions of Papers 61, 67, and 78 on September 6, 2019. *See* Ex. 3001; Paper 81 (Mot.); *see also* Paper 80 (redacted version of Paper 78); Ex. 1074 (redacted version of Paper 61). With respect to Papers 67, 73, and 74, the Motion states that “[t]he Parties having met and conferred agree that Papers 73 and 74 should not be sealed, and that Paper 67 may be sealed as outlined [in the motion].” Mot., 1, 12–16 (proposed redactions to Paper 67); Ex. 1075 (Redacted version of Paper 67).

Considering the agreed-to treatment of Papers 67, 73, and 74, the Board finds there is good cause to unseal Papers 73 and 74, and to seal those portions of Exhibit 67 outlined in the motion (as reflected in redacted Exhibit 1075).¹ Exhibit 67 will, thus, be maintained as partially sealed at

¹ In a September 11, 2019 conference with the Board, Patent Owner indicated that it did not necessarily agree that the redactions to Paper 67 were appropriate, but stated it did not otherwise oppose the redactions as proposed in Exhibit 1075. In any event, Petitioner contends that the redactions to Paper 67 relate to confidential deposition testimony of one of Petitioner’s witnesses, and Patent Owner provides no argument or evidence to the contrary. Mot. 12–16.

present, but subject to the Board's existing Orders for handling sealed documents in this record. *See, e.g.*, Paper 78, 105 (indicating, for example, that "sealed documents in the record shall remain confidential until the conclusion of any appeal or the expiration of the time for appealing, at which time they will be made public").

At the Board's request, the panel (Judges Majors, Scheiner, and Kaiser) and the parties' counsel participated in a conference call on September 11, 2019, to discuss the remainder of the Motion in greater detail—in particular, the parties' opposing positions on several of Petitioner's proposed redactions to Papers 61 and 78.² A court reporter also attended the conference call, and the Board requested that a transcript of the call be filed for the record when available.

Without delving into all the details discussed during the call in this Order, the Board was convinced that the disputed issues in the Motion may be simplified or even resolved through further meetings between counsel. For example, Petitioner agreed during the call that if Patent Owner was indeed de-designating Exhibit 2046 (Decl. of Dean Christal) as confidential, that Petitioner would no longer propose that certain redactions to Paper 78 would be necessary. In addition, it was clear during the call that Petitioner required further assistance from its litigation counsel (from related district court proceedings) to confirm whether it could accurately represent the confidentiality status of certain information that is referenced in Papers 61 and 78. To the extent Patent Owner may have specific citations from portions of the trial record in the related litigation to demonstrate that such

² During the call, Patent Owner confirmed that it was not proposing any specific redactions to Papers 61 or 78.

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information is not confidential (or no longer confidential), the Board encouraged Patent Owner to share such citations with Petitioner through further meeting and conferring on these issues. Thus, the Board ordered the parties to promptly meet and confer and to submit a revised motion to seal related to Papers 61 and 78.

Accordingly, it is:

ORDERED that Papers 73 and 74 are no longer sealed;

ORDERED that the Joint Motion (Paper 81) is *granted-in-part* as to Paper 67 (and Exhibit 1075); and

FURTHER ORDERED that the parties shall promptly meet and confer and file a Revised Joint Motion to Seal Portions of Papers 61 and 78, which revised motion must be filed on or before September 18, 2019.

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